

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of:)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	DA 04-3837
)	

COMMENTS OF SMART REPLY, INC.

I. INTRODUCTION

Smart Reply, Inc. (SRI) is a company which provides marketing services to national retail clients aimed at enhancing consumer loyalty and retaining customers. SRI at all times requires that its clients respect customers' privacy, including honoring "do-not-call" requests. SRI ensures all its messages comply with the restrictions of the Telephone Consumer Protection Act and its accompanying Regulation.

SRI submits these comments in support of the Petition for Expedited Declaratory Ruling filed by National City Mortgage Company asking the Commission to preempt Florida telemarketing law Statute § 501.059 prohibiting prerecorded messages without consent.

SRI has already filed comments regarding DA 04-3185, 3186 and 3187 and urges the Commission to adopt a national standard of regulation of these messages to best serve consumers, businesses and regulators.

II. COMMENTS

The FCC should preempt Florida's law regarding delivery of recordings as well as other states which impose restrictions different than those found in the TCPA and accompany Regulation.

Florida is one of several states which apply different restrictions to the delivery of recorded voice messages other than the standard set forth in the TCPA and its Regulation. 47 CFR § 64.1200(a)(2). SRI and its clients have determined that these messages can be a valuable means of contacting customers regarding items of interest or situations such as need for a given blood type, school snow days, etc.

The Commission has recognized that these messages can be valuable to consumers in similar situations.

Further, there is an important safe guard built into the restriction that commercial calls are allowed only if there is an established business relationship between the caller and the receiving consumer. A business is very protective of its customers and will limit its activity to preserve and foster that relationship.

A primary goal of SRI services is building brand loyalty through well crafted messages designed to improve the relationship between our clients and their customers.

Based on our research, at least 8 states¹ do not allow calls by a business using a recorded message to its established customers. Some of these states have purported to apply these restrictions to interstate calls despite statements by the FCC that these statutes do not apply.

A client of SRI, The Sports Authority, has already been sued by the State of Florida alleging violation of Florida state “do-not-call” list and Florida Statute § 501.059, even though recorded messages placed through SRI were interstate calls placed solely to established customers of The Sports Authority. The suit was filed despite the fact that Florida’s “do-not-call” list exempts calls to established customers of a business. Fla. Stat. § 501.059(1)(c). This action can be found at State of Florida Dept. of Agriculture and Consumer Services v. The Sports Authority Florida, Inc., Docket No. 03-CA-10535 (Fla. Orange Cty. Ct. 2003)

Concurrent or shortly after the filing of this comment, The Sports Authority will be filing a request for preemption of this same section based on Florida’s lawsuit against it for delivery of recorded messages to consumers who have explicitly provided their telephone number to The Sports Authority and have an established business relationship with The Sports Authority.

III. CONCLUSION

SRI urges the Commission preempt state law as applied to interstate telephone calls based on the clear intent of Congress to establish a national regulatory scheme and the interests of consumers, businesses and regulators in such a uniform scheme.

Please contact me if you have further questions.

Dave Savage
President, Smart Reply, Inc.

¹ Arizona (Ar. Stat. § 14-1278); Arkansas (Ark. Code § 5-63-204); Colorado (C.R.S. § 8-9-311); Florida (Fla. Stat. § 51.059); Georgia (Ga. Code § 46-5-23); Washington (Wa. Rev. Stat. § 80.36.400); Wisconsin (Wis. Stat. § 100.52); Wyoming (Wy. Code § 6-6-104).